IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
Geoffrey B. Rhoads
Application No.: 09/574,726
Filed: May 18, 2000
For: MUSIC METHODS AND SYSTEMS
Examiner: C. Agwumezie
Date: July 15, 2008

Art Unit 3621
Confirmation No. 9782

VIA ELECTRONIC FILING

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Appellant requests review of the final rejection in the above-identified application. No amendment is being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheets. (No more than 5 pages are provided.)

Respectfully submitted,

Date: July 15, 2008

DIGIMARC CORPORATION

CUSTOMER NUMBER 23735

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By /Joel R. Meyer/
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Registration No. 37,677

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REASONS FOR REQUEST FOR PRE-APPEAL REVIEW

Sir:

Responsive to the final Office Action dated April 15, 2008, Applicant files herewith a notice of appeal, a request for pre-appeal brief review, and the following reasons for requesting the pre-appeal review.

Claims 1-14, 26-29 and 91-94 are pending in the application, are finally rejected, and are appealed.

Claims 1, 8 and 11 are rejected as failing to comply with the written description requirement. Specifically, the Office contends that the specification contains no support for: "the imperceptible modifications adaptively changing values of the perceptible parts of the visual or audio signals by a varying amount that depends on the values of the perceptible parts."

The specification clearly provides written description support for this claim language. For example, the specification at page 8, lines 8-14, describes how the steganographic encoding is perceptually adapted to the content signal.

Further, the specification as filed incorporated by reference Applicant's priority patents, including U.S. Patent No. 5,862,260 (the '260 patent), which provide further support for the claims in this application. The '260 patent is referenced at page 1, line 22 of the application and is incorporated by references at page 40, lines 8-10 of the application. The Office previously rejected claims 1-14 and 26-29 in this application as being anticipated by the '260 patent, and as such, the Office has taken the position that at least those claims are supported by the '260 patent.

See Office Action dated January 3, 2005. As confirmed in response to the 1/3/05 Action, the application is entitled to priority to the '260 patent, filed May 16, 1996. The '260 patent includes extensive teaching on making imperceptible modifications by adaptively changing values of the perceptible parts of visual and audio signals as claimed. See, for example, col. 3, lines 60-67, which discusses the level of the amplitude of the embedded signal in video or audio that keeps the embedded signal imperceptible to the viewer or listener. See also col. 7, lines 6-17, which provide an embodiment for modifying samples (e.g., pixels) of the content signal by adaptively changing values of pixels by varying amounts that depend on the values of the pixels. See also, col. 15, line 46 to col. 16, line 67, which describes an embodiment for modifying samples of audio or video adaptively (computes a real time scale factor of the embedded signal as a function of the input audio or video data samples).

Claims 1, 8, and 11 are rejected as being indefinite. Specifically, the Office contends that it would be unclear to one of ordinary skill in the art to understand what is meant by "the imperceptible modifications adaptively changing values of the perceptible parts of the visual or audio signals by a varying amount that depends on the values of the perceptible parts."

When considered in light of the specification, one of ordinary skill in the art would clearly understand the cited claim language. As noted above, the specification (including the '260 patent incorporated by reference) clearly provides support for these elements. Therefore, one of skill in the art would understand the claim language within the context of the explicit and detailed teachings of the specification.

Claims 1-4, 6-9, 11-14, and 91-94 are rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 6,240,185 to Van Wie et al. Van Wie has a priority filing date of August 1996, whereas the claims have priority support at least as early as May 1996, as result of the priority to the '260 patent. Therefore, Van Wie is not prior art to these claims.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Wie in view of U.S. Patent No. 5,473,631 to Moses ("Moses"). Van Wie is not prior art to claim 5.

Claim10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Wie in view of U.S. Patent No. 5,249,166 to Hamilton et al. ("Hamilton"). Van Wie is not prior art to claim 10.

Claims 26-29 are rejected under 35 U.S.C. Section 102(e) as being anticipated by U.S. Patent No. 5,444,779 to Daniele ("Daniele"). This rejection identifies Daniele in paragraphs 29 and 31, but applies Van Wie in paragraph 30. Van Wie is not prior art.

Claim 26 specifically recites: "method of altering a music signal to steganographically insert plural bits of watermark data therein, characterized by steganographically inserting..." in combination with additional elements. Daniele teaches a glyph, which is a visible marking placed on documents. While these documents might include prose, poetry or music (i.e. sheet music) on printed documents, it is not technically possible to insert such a glyph mark into a music signal. Daniele provides no relevant teachings regarding altering music signals to insert bits of data therein.

Claims 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daniele in view of U.S. Patent No. 5,249,166 to Hamilton et al. ("Hamilton"). As described above, Daniele is not relevant to music signals because its teachings about putting glyphs in printed material are clearly not applicable to music signals. Daniele is not relevant to these claims, and Hamilton does not disclose the elements of the claims missing from Daniele.

Respectfully submitted,

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